

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID LEE,

Plaintiff,

vs.

DARCY SPEARS,

Defendant.

Case No. 2:12-cv-01397-LRH-CWH

FINDINGS AND
RECOMMENDATION

Plaintiff submitted an Application to Proceed *in Forma Pauperis* (#1) and Complaint on August 7, 2012. On October 4, 2012, the Court granted Plaintiff's Application to Proceed *in Forma Pauperis* (#1) and ordered the Clerk of the Court to file Plaintiff's Complaint (#5). In addition, the Court ordered that the Complaint be dismissed without prejudice and granted Plaintiff thirty (30) days to file an amended complaint correcting the noted deficiencies.

All of Plaintiff's claims against Defendant are tort claims arising under state law. As a result, the Court found that Plaintiff did not demonstrate that this Court has subject matter jurisdiction based on a federal question. Additionally, according to Plaintiff's complaint, he is a citizen of Nevada and Defendant is a citizen of Nevada. Thus, the Court found that Plaintiff did demonstrate diversity of citizenship required for subject matter jurisdiction based on diversity. More than thirty days have elapsed since the Court's Order dismissing Plaintiff's Complaint without prejudice and Plaintiff has not submitted an amending complaint with sufficient facts to state a plausible claim for relief in this case.

Based on the foregoing and good cause appearing therefore,

RECOMMENDATION

IT IS HEREBY RECOMMENDED that Plaintiff's Complaint (#5) be **dismissed with prejudice** because Plaintiff failed to file an amended complaint within 30 days of the Court's

October 4, 2012 Order.

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 6th day of November, 2012.



C.W. Hoffman, Jr.
United States Magistrate Judge